148 US 196

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1344~~. ~~130~~ 467

THE UNITED STATES, APPELLANT,

vs.

GEORGE TRUESDELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1344.

THE UNITED STATES, APPELLANT,

vs.

GEORGE TRUESDELL.

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1 In the Court of Claims.

GEORGE TRUESDELL, CLAIMANT,
against
THE UNITED STATES, DEFENDANT. } No. 14784.

I.—*Original petition.*—*Filed Feb.* 19, 1886.—*J. R.*

To the Court of Claims:

George Truesdell petitions this honorable court, and states as follows:

1. He is a citizen of the United States and a resident of the District of Columbia.

2. He is the owner in fee simple of all that certain tract of ground and real estate in the District of Columbia known and described as, and being, lot numbered two (2), in the subdivision made by the heirs of Loveday Pairo, of lot numbered four (4) of the subdivision made by Anthony Holmead's devisees of a part of the tract of land known as "Widow's Mite," and containing four (4) and thirty-seven hundredths ($\frac{37}{100}$) acres, as per plat recorded in Liber R. M. H., 21, folio 386 of the land records of said District, subject, however, to an incumbrance thereon in the form of a deed of trust, or mortgage, to secure an indebtedness not yet due; that
2 he was such owner on the 21st day of August, 1883, and hath so continued such owner since that date.

3. That on the said 21st day of August, 1883, the then Attorney-General of the United States published in one or more of the daily newspapers in said district a notice, as provided by the act of Congress approved July 15th, 1882, and contained in the United States Statutes at Large, volume 22, page 168, entitled "An act to increase the water supply of the city of Washington, and for other purposes." That the said notice so published was for the purpose of informing all persons interested that the defendant herein, through its officers and agents, proposed to condemn and take title to certain property described and certain rights in property, for the construction of the reservoir and tunnel leading thereto, as contemplated by Congress in said act; and, among other matters, the said notice contained the following paragraph:

"1st. It is proposed to take a right of way for a tunnel, whose least depth below the surface of the ground will vary from 50 to 170 feet, as shown in detail by the longitudinal section on tracing A; the line of tunnel commences at the auxiliary gate-house of the distributing reservoir; thence north 81° 40′ 22″, east 20,826 feet, to its eastern limit at the site of the proposed reservoir east of the Howard University."

4. That the said proposed tunnel line ran through the tract of land above described belonging to this petitioner; and this petitioner so informed the Attorney-General, and claimed damages by reason of such proposed condemnation, as invited to do by said notice. But he says that the defendant, without payment to him of any damages directly or indirectly arising in the premises, or by reason of such proposed condemnation, by its officers, agents, and employés, entered upon the work of con-
3 structing the said tunnel, and has constructed the same through the said property of this petitioner on the following line: Commencing

at a point on the west line of said lot, 122 feet from a stone planted on the north building line of Garfield avenue, and thence extending 479.5 feet north, 82° 40′ east (magnetic), to a point on the west building line of Columbia road, 70.5 feet from the north building line of Garfield avenue.

5. That the Attorney-General caused an appraisement to be made of the supposed damage which would result to this claimant's said ground by reason of the construction of said subterranean tunnel, which was fifty cents per lineal foot, aggregating $239.45; but in such appraisement, claimant is informed and believes and therefore avers, that no special damages were considered or included, and that said nominal sum was simply estimated as a compensation for the right of way for said tunnel. That the said estimated damage has not been paid to this petitioner, or any part thereof; and he says it is wholly inadequate and insufficient to indemnify and satisfy him for the actual damage occasioned by the construction of said tunnel.

6. That the petitioner's said tract of ground and premises is situated on the high land north of Boundary street, and at a point which would be between 20th and 21st streets if extended, and the same fronts on Columbia road. That this petitioner acquired the said property long before the contemplated construction of said tunnel, and for the purpose of a home, as well as for the further purpose of building other houses and improvements thereon for rent or sale. That he improved said tract by building a valuable dwelling-house with barn and other outbuildings thereon, and planted a portion of the ground with valuable shrubbery, trees, and plants, and contemplated building other houses thereon;
4 and, for the purpose of supplying water to said premises, he dug and blasted in the rock underlying said premises a large well, proposing by the aid of a wind-mill or steam-pump to raise the water therefrom and to fill a tank suitable in size and position to supply the whole tract and all the houses to be built thereon with water from the said well. That he excavated and made the said well in a very dry time and at a great expense, and completed it about the first of November, 1881, since which time, up to about the 15th day of October, 1885, the said well yielded an abundance of pure, good water for the use of petitioner and his tenants and others; and the same was the only source of supply for the general purposes of water for drinking, cooking, irrigating, and other domestic uses, and the supply seemed to be inexhaustable, even in the dryest weather.

7. That on or about the said 15th day of October, 1885, the said well dried up and has not yielded any water since that time, and is not likely to yield water again, as he believes and avers, at any future time, because of the acts of the defendant in constructing the said tunnel. That the said tunnel runs within about one hundred feet of said well, and below the grade of the bottom of said well; and the draining of said well is the direct result of said tunnel.

8. That not only has the said well been drained by the said tunnel, and its value, present and prospective, wholly destroyed, but the petitioner has been further damaged thereby in this: that his said tract of ground is rendered incapable of the making or sustaining of a well in any other part of it, so that, as he believes and avers, he can have no dependence here-

after on well-water in any part of his said tract; and the whole property is thereby greatly depreciated.

9. That the petitioner is further damaged by the said tunnel in this: that at and about the time of its construction and completion through his grounds, his said premises were rented to a tenant whose family were depending solely on the water from said well for their use and comfort; and this petitioner had, for himself and family, made plans for an extended tour in California on business of importance, which would take him to other Western States and Territories, and was in the midst of said tour in California, when, on or about the 25th day of October, 1885, he received word from his tenant that the said well had been drained and that some other provision was required to supply the said place with water, and that the said want of water, so caused by defendant, to supply said premises, prevented the petitioner from completing his contemplated journey and business then in hand, and rendered it necessary for him to return to Washington City to make some provision for water for said tenant, and petitioner did, for that reason only, and at great expense and disappointment, forego his said plans and purposes and return to make such reparation as he could for the loss of the said well.

10. He states that he has already incurred much expense, and been put to great damage in making other provisions for a supply of the water necessary to render his said dwelling tenantable, and to take the place of said well; and that as he believes such provision will be a continuing expense and burden to him, and will not then be so valuable or advantageous to him as the said well, and the ability to construct other wells on said premises would have been but for the construction of said tunnel by the officers, agents, and employés of the defendant as aforesaid. That by reason of the said premises, this petitioner claims and avers, that he has been damaged in his property rights, in the property aforesaid, by the acts of said defendant as aforesaid, and has sustained injury thereby in the full sum of three thousand (3,000) dollars, which he claims should be paid him by the defendant.

11. That no assignment or transfer of the said claim for damages or of any interest therein or of any part thereof has been made by him; that he believes himself justly entitled to recover from the defendant the sum of three thousand dollars as the damage and injury arising and occasioned by the acts of the defendant in constructing the said tunnel as aforesaid, after allowing to the defendant all just credits, benefits, and off-sets to which it may be entitled; and that this claimant has not in any way aided, abetted, or given encouragement to rebellion against the United States Government.

The premises considered, the petitioner, therefore, prays for judgment against the United States for the full sum of three thousand dollars ($3,000), and for all such other and further relief as he may be entitled to receive, under the law, by reason of the facts aforesaid.

JOB BARNARD,
Attorney for Petitioner, 412 5*th st.*, *N. W.*

DISTRICT OF COLUMBIA, *ss:*

George Truesdell, being duly sworn, on his oath says that he has read the foregoing petition and knows its contents; and that the facts therein stated of his own knowledge are true, and the facts therein stated on information and belief he believes to be true.

GEORGE TRUESDELL.

Subscribed and sworn to before me this 17th day of February, 1886.
[SEAL.] WM. WARD MOHUN,
Notary Public, D. C.

7 II.—*General traverse—Filed Sept.* 22, 1886.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the ttorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

8 III.—*Amendment to petition—Allowed to be filed May* 6, 1890.

Now comes the claimant, George Truesdell, and moves the court for leave to amend his petition without reprinting the same, by inserting in said petition wherever the words "three thousand dollars" occur in lieu thereof the words "three thousand one hundred dollars."

JOB BARNARD,
GEORGE A. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

George Truesdell, being duly sworn, deposes and says he has read the foregoing amendment and knows the contents thereof, and that the additional sum therein claimed is justly due from the United States.

GEO. TRUESDELL.

Subscribed and sworn to before me this 15 day of October, 1889.
[SEAL.] THOS. S. HOPKINS,
Notary Public.

9 IV.—*Findings of fact and conclusion of law—Filed June* 9, 1890.

FINDINGS OF FACT.

This case, having been heard by the Court of Claims, the court finds the facts as follows:

I.

On August 21, 1883, the claimant was the owner of the certain tract of land described in the petition, being lot numbered two (2) in the subdivis-

ion made by the heirs of Loveday Pairo; of lot numbered four (4) of the subdivision made by Anthony Holmead's devisees of a part of the tract known as "widow's mite," in the District of Columbia. containing four (4) and $\frac{37}{100}$ acres, and he has been such owner from that time to the present. This property, on said date, had valuable improvements upon it, consisting of a dwelling-house, stable, out-houses, fruit trees, and ornamental shrubbery, and a well dug forty-three feet deep, thirteen feet of which was through solid rock, and which supplied an abundance of water for household purposes of the claimant, who resided on said property. That the cost of constructing said well, which was done in August and September, 1881, was about $500.

10 II.

That under act of Congress to increase the water supply of the city of Washington (22 U. S. Stat., L. 168) proceedings were had for the condemnation by the Government of a right of way for an underground tunnel across the petitioner's said land at a depth to vary from 50 to 170 feet below the surface. This tunnel ran across the claimant's ground about 450 feet and about 160 feet below the surface.

III.

The ordinary damages supposed to result from this tunnel to the claimant was assessed by a board of appraisers at 50 cents a running foot, but this amount has not been paid, and the same was assessed before the well of water on said premises had been drained and destroyed by said tunnel, and the damage to said well was not considered by the appraisers in estimating the said amount of 50 cents per lineal foot.

IV.

The damage to the claimant by reason of the digging of said tunnel through his said premises is caused mainly by the drainage thereby of his well of water from which his premises were supplied, and by reason of which drainage he was put to expense in procuring water in a
11 different manner and of a different quality; the amount of damage suffered by him by reason of the premises is the sum of twenty-seven hundred and seventy-five dollars.

The amount allowed by the appraisers, as set forth in Finding III, amounted to the sum of $225, which has not been paid to the claimant nor tendered to him. Said amount of $225, which we hereby find so assessed, is the amount of damages suffered by claimant because of the construction of said tunnel through said lands, not including the damages to said well. The whole amount of damages is three thousand dollars.

CONCLUSION OF LAW.

Upon the foregoing findings the court determines as a conclusion of law that the claimant recover the sum of three thousand dollars.

12 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 9th day of June, A. D. 1890, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said George Treusdell do have and recover of and from the United States the sum of three thousand dollars ($3,000.00).

13 VI.—*Application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 9th day of June, 1890, in favor of claimant, the defendants, by their Attorney-General, on the 11th day of June, 1890, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court June 11, 1890.

WILLIAM A. RICHARDSON,
Chief-Justice.

14 In the Court of Claims.

GEORGE TREUSDELL, *vs.* THE UNITED SATES. } No. 14,784.

I, Archibald Hopkins, clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the final judgment, of the application of defendants for and allowance of appeal to the Supreme Court, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this eighth day of August, A. D., 1890.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 1344. The United States, appellant, vs. George Truesdell. Filed October 4, 1890. Court of Claims.

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CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
GEORGE TRUESDELL. } No. 467.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
GEORGE TRUESDELL. } No. 467.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This suit was brought in the Court of Claims to recover damages for the loss of a well consequent upon the extension of the Washington aqueduct, and also for compensation for a right of way across claimant's land, taken for the purpose of constructing a tunnel, by virtue of an act of Congress of July 15, 1882, entitled "An act to increase the water supply of the city of Washington, and for other purposes." (22 Stat., 168.)

The distinction between this case and that of Finnella M. Alexander *et al.*, No. 552, is that the survey and tunnel

pass over a portion of appellee's tract of land, while in the former case the land was remote from the tunnel and outside of the survey.

Complying with the requirements of the statute, three appraisers were appointed, who proceeded to assess the damage to appellee's land, which they did at 50 cents a running foot, making a total of $225. It is claimed, however, and so found by the Court of Claims, that this assessment was made before the well was drained and destroyed, and consequently the damage to said well was not considered by the appraisers in their assessment.

In the finding of fact and conclusion of law filed by the court below on June 9, 1890, it appears that the amount of $225, assessed by the appraisers, has not been paid to appellee nor tendered to him, and further that this amount did not include the damage to said well of $2,775. From this decision the present appeal is prosecuted on behalf of the Government.

Upon the facts found the Court of Claims erred in its conclusions of law in giving judgment against the United States for $2,775, which represents the amount of damage suffered by appellee by reason of the loss of the well.

ARGUMENT.

It is admitted on behalf of the Government that appellee is entitled to the sum of $225, found by the court as the amount assessed by the appraisers as due for damages resulting to the land in consequence of the taking of the right of way and the construction of the tunnel as required by the statute.

But with respect to the damages sought to be recovered for the loss of the well, it is urged that they are not such as can be recovered under the statute, and reference is respectfully made to the argument set forth in the brief of the Government in the case of *The United States, appellant*, v. *Finnella M. Alexander et al.* (No. 556 of this term). Every argument there set forth applies with equal force to the case at bar; for the only distinction attempted to be made between the two is that in this case there was an actual entry on appellee's land, while in the other there was not.

Respectfully submitted.

JOHN B. COTTON,
Assistant Attorney-General.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 467.

THE UNITED STATES, Appellant,

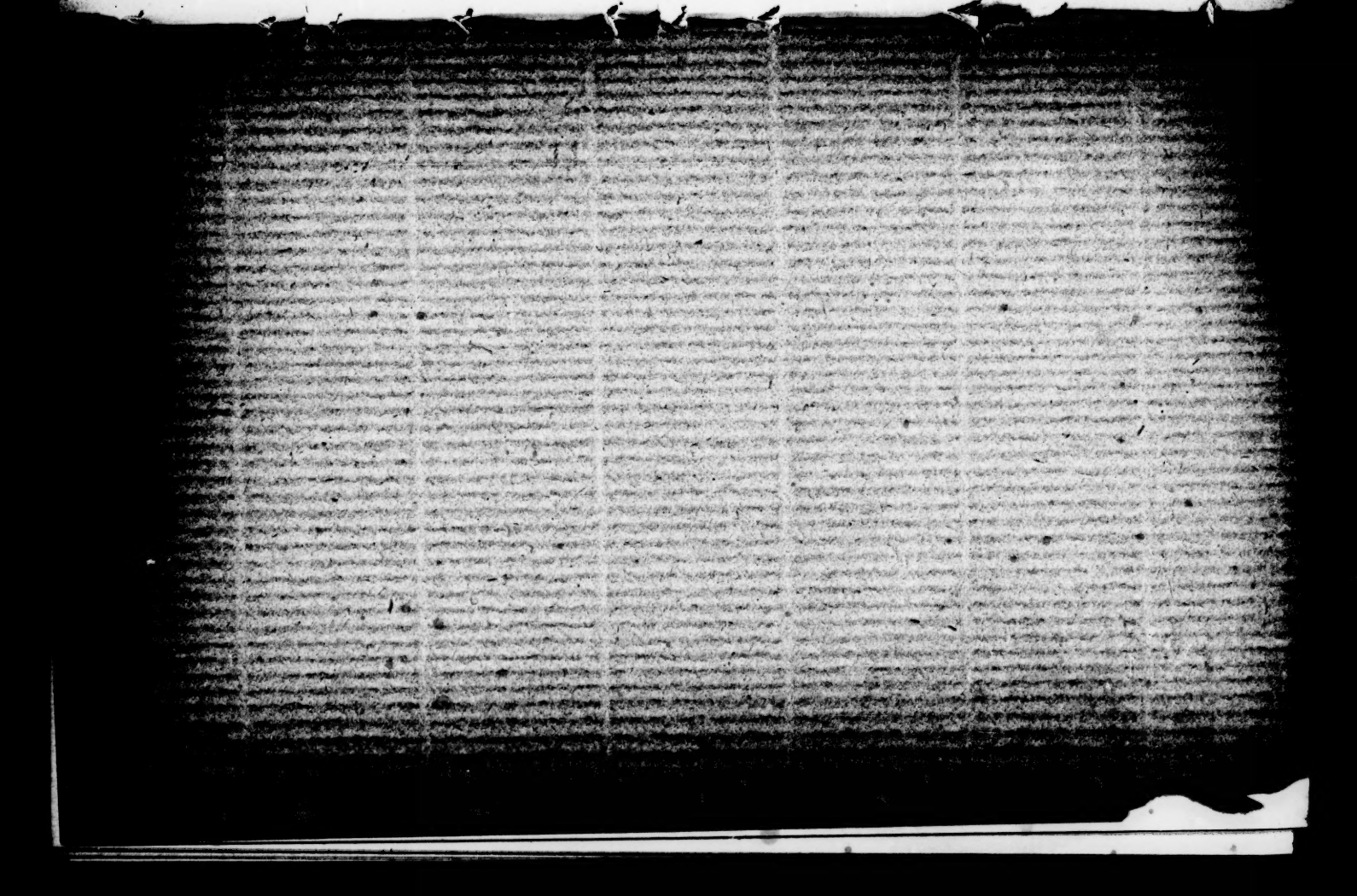
v.

GEORGE TRUESDELL.

BRIEF FOR APPELLEE.

JOB BARNARD,
GEORGE A. KING,
Attorneys for Appellee.

PRESS OF H. L. McQUEEN, WASHINGTON.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, Appellant,
v.
GEORGE TRUESDELL. } No. 467.

I. Statement of the Case.

This is a suit in the Court of Claims for the recovery of compensation for a right of way across the land of the claimant in the case for the construction of the Washington Aqueduct extension under the act of July 15, 1882, 22 Stat. 168, and for damages for the destruction of the claimant's well by such extension. The statute is set forth in full in our brief in the case of *The United States, Appellant,* v. *Finnella M. Alexander et al.* No. 552.

The claimant at the time of the construction of said aqueduct extension, was, and still is, the owner of a tract of land in the District of Columbia containing 4.37 acres, and having valuable improvements thereon consisting of a dwelling house, stable, outhouses, fruit trees, and ornamental shrubbery, and a well dug 43 feet deep, 13 feet of which was through solid rock, and which supplied an abundance of water for the household purposes of the claimant, who resided on the property. The cost of constructing said well was about $500.

Under the act of 1882, above referred to, proceedings were had for the condemnation by the Government of a right of way for an underground tunnel across the claim-

ant's land at a depth to vary from 50 to 170 feet below the surface. This tunnel ran across the claimant's ground about 450 feet, and about 160 feet below the surface. The ordinary damages supposed to result from this tunnel to the claimant was assessed by the appraisers appointed under the statute at 50 cents a running foot, amounting to $225, but this amount was assessed before the well of water on the premises had been drained and destroyed by the tunnel, and the damage to the well was not considered by the appraisers in estimating the said amount of 50 cents per lineal foot. Said sum of $225 has not been paid or even tendered to the claimant, and is found by the Court of Claims to have been the amount of damage suffered by the construction of the tunnel through the lands, not including the damages to the well.

The damage to the claimant by reason of the digging of said tunnel through his premises is caused mostly, however, by the drainage thereby of his well of water, from which his premises were supplied, and by reason of which drainage he was put to expense in procuring water in a different maner, and of a different quality. The amount of damage suffered by him by such drainage of his well is $2,775.

The whole amount of damages is $3,000. For this amount the Court of Claims gave the claimant a judgment.

From that judgment the present appeal is prosecuted by the United States.

II. Brief of Argument.

The only difference between this case and that of *The United States, Appellant*, v. *Finnella M. Alexander et al.* No. 552, is that in that case the tunnel for the extension of the Washington Aqueduct, by the construction of which

the damages complained of were caused, was not through the land of the claimants but at some distance therefrom, and the only injury suffered by the claimants in that case was the destruction of their well by the drainage of the water therefrom; while in the present case the tunnel was constructed directly through the claimant's land, and although his claim is mainly for an injury of like character as that in the Alexander case, viz. the drainage of his well, it embraces also a claim for compensation for the right of way assessed by the appraisers at 50 cents a running foot, but which has not been paid or tendered him.

As to the compensation for the right of way there can, of course, be no question. It was assessed by the appraisers under the act at $225, and so reported to Congress by the Attorney-General in Senate Ex. Doc. No. 43, 48th Cong. 2d Sess. p. 5, where it is stated as $239.75.

The greatest damage, however, suffered by the claimant was by the drainage of his well of water by the construction of the tunnel, and this damage is estimated by the Court of Claims at $2,775. Every argument urged in our brief in the case of *The United States, Appellant*, v. *Finnella M. Alexander et al.* No. 552, in favor of that claim applies with equal or greater force to the present. There, although there was a direct physical injury to the claimants' property through the construction of the tunnel entitling them, as we have insisted, to compensation, yet the officers of the United States are not shown to have entered in person upon their land. In the present case there was a direct entry upon the land by the officers of the Government, and a physical invasion of the property resulting in the destruction of a valuable well of pure water.

Thus the case is brought directly within the principle announced in *Pumpelly* v. *Green Bay Co.* 13 Wall. 166,

181, "That where real estate is actually invaded by super-induced additions of water, earth, sand, or other material, or by having any artificial structure placed on it so as to effectually destroy or impair its usefulness, it is a taking within the meaning of the Constitution." That case was decided entirely on constitutional provisions directing just compensation to be paid for private property taken for public use, while the present rests also upon a statute directing compensation to be paid for all direct injuries occasioned to property by the extension of the aqueduct.

The judgment of the Court of Claims allowing the claimant compensation for both classes of injuries sustained by him by the construction of the tunnel, should, therefore, be affirmed.

JOB BARNARD,
GEORGE A. KING,
Attorneys for Appellee.